In the High court of Uttaranchal, at Nainital.

Chapter VIII, Rule 32 (2) (b)
Description of Case.

Criminal Appeal No. 1839 of 2001

Umed Singh and another
Vs.
State

Date of Decision: 9th March, 2005

For the approval of:

Hon'ble Mr. Justice Irshad Hussain, J.

Hon'ble Mr. Justice Rajesh Tandon, J.

- Whether the order/judgment should be Sent for reporters for reporting? (Yes)

- Whether the reporters be allowed to See the judgment? (Yes)

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High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 1839/2001

1- Umed Singh @ Med Singh S/o Madan Pal,
R/o Village Allauddinpur,
P.S. Jhinjhana, District
Muzaffarnagar U.P.

2- Shiv Kumar @ Sibbal S/o Arjun
R/o Khanpur Kalan Gaon,
P.S. Jhinjhana
Distirct Muzaffarnagar U.P. …… Appellants.

Vs.

State …. Respondent.

Sri Vinod Sharma, learned counsel for the appellants.
Sri Nandan Arya, learned A.G.A. for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble Rajesh Tandon, J.

Dated: 9th March, 2005,

Per: Hon'ble Mr. Justice Irshad Hussain.

Appellants Umed Singh and Shiv Kumar @ Sibbal Stand convicted and sentenced to undergo Imprisonment for life each under Section 395 I.P.C.; R.I.; for ten years each under Section 397 I.P.C.; R.I. for ten years each under Section 412 I.P.C. and R.I. for one year each under section 25 of the Arms Act, per judgment and order dated 29-9-2001 passed by Additional Sessions Judge IV (F.T.C.), Dehradun in Sessions Trial Nos. 104/1998, 156/1998 and 157/1998. The sentences were directed to run concurrently.

2. Briefly stated the prosecution case was that in the night between 3/ 4-2-1998 at about 2.15 A.M. five or six miscreants entered inside the house of informant Manoj Sharma (P.W.1) in the campus of Guru Ram Rai Degree College within the Circle of P.S. Kotwali, Dehradun after breaking open the door of the house of the informant and started assaulting Surendra Sharma and Smt. Mithlesh Sharma, the parents of the said informant. Hearing the alarm raised and noise created, informant and his wife woke-up, but they were also assaulted by Lathi and Dandas wielded by these miscreants. These

miscreants then started plundering with the house hold articles and committed theft of double-barrel gun, ornaments, clothes and cash etc and fled away from there. They were seen in the electric light and the informant volunteered that these miscreants could be identified by him and others if produced before them. The informant prepared a written report, Ext. Ka.1 and delivered the same at the Police Station at 5.30 AM on 4.2.1998. A case was registered under Sections 395/397 I.P.C. against 5-6 unknown miscreants. Informant also submitted detailed list Ext. Ka.2 of his properties taken away be these miscreants.

4- During investigation on the clue provided by the informant these appellants and one Bhagta were arrested a 2:30 P.M. on 11.2.1998. Appellant Umed Singh on his pointing got recovered the golden ring, three pairs of silver Paijeb and ladies wrist watch. This appellant was arrested when he was carrying with him one twelve-bore gun-like pistol in operational condition and three live cartridges, which were stolen from the house of the informant and the stolen items were got recovered by him at 2.25 A.M. on 16.2.1998 from Mohalla Nai Basti near Railway Pass of the town of Roorkee, District Haridwar. On the pointing of the appellant stolen V.C.P. was also got recovered. Like-wise on the pointing of appellant Shiv kumar alias Sibbal stolen property viz; golden chain, two pairs of silver paijeb and one twelve bore gun with three live cartridges were recovered. Further on 16.2.1998 at 3.30 A.M. on his pointing stolen property viz; two golden (rings) and one pair of golden ear rings were got recovered from the house of Umed Singh from near Railway Pass in the town of Roorkee, where the said appellant was residing as a tenant. Some recoveries were got effected by another miscreant Bhagta, which need not be mentioned here, in view of his not facing the trial before the Sessions Judge. The arrested appellants were put to test identification parade besides the recovered property and on completion of the usual formalities of the investigation charge sheets were submitted against the appellants and another.

5- Appellants pleaded not guilty to the accusations of the prosecution and claimed that they have been falsely implicated in the

case and claimed to be tried for the offences with which they have been charged.

6- At the trial, prosecution examined ten witnesses including the informant Manoj Sharma (P.W.1), his wife Smt. Poonam Sharma (P.W.2) and another occupant of the house at the time of the incident, Babu Ram (P.W.3), all of whom have supported the factum of dacoity committed in the house of the complainant in the night between 3/ 4-2-1998 and in which the property was taken away be the dacoits, who were numbering 5-6 at that time. They have correctly identified the appellants in the test identifications parade and claimed to have seen them at the time of the incident and subsequently in the test identification parade conducted by Executive Magistrate, Sri Surya Mohan Nauiyal (P.W.4). The witnesses of the fact also identified the properties stolen and recovered from the appellants as mentioned above. Another witness of the identification constable Ashok Kumar (P.W.5) also correctly identified the appellant Shiv Kumar alias Sibbal as he had seen this appellant and another while they were running away after committing the dcaoity from the scene of the incident. Head Constable Ved Pal Singh Mullick (P.W.6) is the witness of the arrest of the appellants besides the recoveries effected from them as stated above and he too supported the prosecution case and corroborated the evidence of the informant and others. Inspector Sri J.P. Sharma (P.W.7), another witness of the arrest and recovery, also supported the prosecution version and corroborated the evidence of the other witnesses of the arrest and recovery. S.I. Ramesh Chandra Chaudhary (PW.8) investigated the case against the appellants as regards the recovery from them and charge sheets submitted after investigation. He also formally proved the sanction obtained from the District Magistrate to prosecute the appellants for the offence punishable under Section 25 of the Arms Act. Head Constable Sant Ram (P.W.9) formally proved the check F.I.R. and whereas S.I.R.K. Chauhan (P.W.10), another Investigating Officer of the case, proved the various steps taken towards the investigation of the case till filing of the charge sheets against the appellants under Sections 395, 397, and 412 I.P.C. Learned Sessions Judge on the basis of the evidence on record accepted the case of the

prosecution and held the appellants guilty of the offences and convicted and sentenced them as aforesaid.

7- We have heard the learned counsel for the parties and have gone through the evidence on record as well as the judgment under appeal on the assistance of the learned counsel for the parties.

8- Learned counsel for the appellants did not dispute the finding in regard to the occurrence in which the dacoity was committed in the house of the informant Manoj Sharma (P.W.1) and the property looted from his house, but challenged the finding of guilt only on one ground that the test identification of the appellants do not repose confidence and appear reliable in view of the fact that it was held after about 2 ½ months from arrest of the appellants on 11-2-1998. Learned counsel in support of his argument placed reliance on a decision of the Apex Court in Soni Vs. State of Uttar Pradesh (1982) 3 SCC, 368 where the identification parade held after a lapse of 42 days from the date of arrest of the appellant was held to be doubtful and the geniuses of the parade was found to be suspicious. It is well settled that the insistence to have the test identification parade held as early as possible from the date of the arrest of the miscreants is to ensure that the identification marks of the miscreants or their profile and features may not get faded from the memory of the witnesses and the test identification pared held without delay appear genuine and worth reposing confidence therein . In the instant case the miscreants committed dacoity in electric light and all the three witnesses who were inside the house have had the opportunity to see the faces of the miscreants in full glare as a result of which the witnesses were able to keep afresh in memory the profile, features and identifying marks of the miscreants and which facilitated them to correctly identify the appellants as those miscreants when the test identification parade was held after more than 2 ½ months. In a situation like this the delay in holding the test identification parade. Can not be taken to throw doubt on the genuineness of the parade. In Harinath V. State of U.P. A.I.R. 1988 SC 345 it was held that the test identification parade held after unexplained delay of four months after arrest of the accused detracts from its credibility and the benefit of this unexplained lack of promptitude in holding the test identification endured to the accused.

Since in the instant case the facts themselves make out a genuine case of the witnesses having opportunity to see the faces of the dacoits in full electric light glare the delay do not detracts from the credibility of the test identification and in the peculiar facts of the case the prosecution was not even required to put forward any explanation about the delay of 2 ½ months in holding the test identification parade. Even otherwise in the reported case the insistence for explanation was in a case when there was delay of more than four months after arrest of the accused in holding the test identification. In our view the decision does not help the cause of the appellants and we see on merits in the argument of the learned counsel that the test identification of the appellants in this case does not admit as an element of doubt and suspicion in its credibility.

5. Learned counsel did not argue anything against the test identification of the property recovered from the appellants and which belong to the informant Manoj Sharma to whom the property was duly entrusted.

10- Even though the learned counsel for the appellants made no submissions against the evidence of the witnesses examined in the case, but still we have gone through the evidence of the witnesses of the fact and found no substance worth mentioning there as may in any way effect adversely their credibility. The witnesses of the fact having identified the appellants correctly he learned Sessions Judge was fully justified in holding the appellants guilty of the offences of committing dacoity and also for retaining the looted property recovered from them. Unlicensed arms were also recovered from them and therefore the appellants were rightly held guilty and convicted of the offences punishable under Sections 395/397/412 I.P.C. as well as under Section 25 Arms Act.

11- Learned counsel for the appellants then argued that the sentences awarded against the appellants is excessive and disproportionate to the gravity of the offence established against them. Learned counsel also submitted that the prosecution did not adduce any evidence to show that any injury was sustained by any of the occupants of the house where the dacoity was committed and that in the totality of the circumstances of the case the sentence of

imprisonment already undergone by the appellants shall be sufficient to meet the ends of justice. It need to be stated here that appellants are in jail since the date of their arrest on 11-2-1998 and till date they have undergone the sentence of more than seven years. Therefore, in the peculiar facts of the case and considering that the appellants have no previous conviction to their credit, the submission of the learned counsel for the appellants can not be said to be without substance and force and consequently it is a fit case in which the sentence need to be reduced for the period already undergone.

12- The appeal is partly allowed. The judgment dated 29-9-2001 passed by the Additional Sessions Judge IV (F.T.C.) Dehradun, in Sessions Trial Nos. 104/1998, 156/1998 and 157/1998 is affirmed so far as the conviction of the appellants Umed Singh and Shiv Kumar alias Sibbal under Sections 395/397/412 I.P.C. and under Section 25 Arms Act is concerned. However while maintaining the sentence awarded under Section 25 Arms Act, the sentence of life imprisonment awarded under Section 395/397/412 I.P.C. is reduced to the sentence of imprisonment already undergone by the appellants. The sentences to run concurrently. The appellants shall be released forthwith, if not wanted in connection with any other case.

13- Let the record be sent back to the court concerned for compliance to be reported to the Court within two months.

(Rajesh Tandon, J.) **(Irshad Hussain, J.)**

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